## UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

TIME INC., HEARST CORPORATION, ADVANCE:
MAGAZINE PUBLISHERS INC., AMERICAN
MEDIA, INC., HACHETTE FILIPACCHI MEDIA
U.S., INC., THE McGRAW-HILL COMPANIES,
INC., NEWSWEEK, INC., SOURCE INTERLINK
MAGAZINES, LLC, REED BUSINESS
INFORMATION, A DIVISION OF REED
ELSEVIER INC., VARIETY, INC., REED
ELSEVIER PROPERTIES INC., BONNIER
CORPORATION, ZIFF DAVIS PUBLISHING
HOLDINGS INC., FORBES LLC, REIMAN MEDIA
GROUP, INC., RD LARGE EDITION, INC., HOME
SERVICE PUBLICATIONS, INC. and READER'S
DIGEST LATINOAMERICA SA,

A SA,

Plaintiffs,

- against -

DARREN ANDREW BUDD, SALVEO LIMITED, CYBERNET COMMUNICATIONS, INC., SWITCHWORKS TECHNOLOGIES, INC.; HAMIDULLA GHUMAL ABBAS, YOAV SCHWARTZ, RICK ROSS and JOHN DOES 1-20,

Defenda	nts.	

08 Civ. <u>7392</u> (WHP) ECF CASE

# DECLARATION OF JEREMY POMEROY IN SUPPORT OF PLAINTIFFS' MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

I, JEREMY POMEROY, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am Vice President and Associate General Counsel of Reed Business Information ("RBI"), a division of Reed Elsevier Inc., and Associate General Counsel of Variety Inc. ("Variety"; and, collectively with RBI, "Company"), two of the plaintiffs in the within infringement action. I am fully familiar with the facts stated herein. I submit this

declaration in support of plaintiffs' motion for a temporary restraining order and preliminary injunction enjoining and restraining defendants Darren Andrew Budd ("Budd"), Salveo Limited ("Salveo"), Cybernet Communications, Inc. ("Cybernet"), Switchworks Technologies, Inc. ("Switchworks"), Hamidulla Ghumal Abbas ("Abbas"), Yoav Schwartz ("Schwartz"), Rick Ross ("Ross") and John Does 1-20 (collectively, "defendants") from infringing plaintiffs' copyrights, trademarks and trade dress.

- 2. RBI is a division of Reed Elsevier Inc., a Massachusetts corporation with a principal place of business at 360 Park Avenue South, New York, NY 10010-1710. Variety is a New York corporation with a principal place of business at 5700 Wilshire Boulevard, Los Angeles, CA 90036.
- 3. Company owns and publishes many well known magazines, including: *Variety* and *Interior Design*. *Variety* and *Interior Design* magazines are both distributed throughout the United States (including in New York), Canada, and dozens of other countries throughout the world.
- 4. Company's practice with regard to obtaining copyright on these magazines generally is to submit publications for group registration with the United States Copyright Office on a regular basis.
- 5. The purpose of this declaration is to set forth factual information and exhibits relevant to this injunction motion.

#### Mygazines.com Is Infringing Company's Copyrights and Trademarks

6. I first became aware of the Mygazines.com website on or about July 23, 2008, at which time the website appeared to be fully populated with uniform, high-

quality magazines. Without Company's knowledge, consent or authorization, Mygazines.com was displaying full text reproductions of numerous magazines owned and published by Company.

- 7. Specifically, the full text of the following magazines owned and published by Company are among those being displayed by defendants on the Mygazines.com website without our consent:
- (a) Interior Design, Volume 76, No. 8 (June 2005). Company obtained Copyright Registration No. TX 6-202-571 for this issue on July 15, 2005. A copy of the copyright registration certificate is annexed hereto as part of Exhibit A.
- (b) *Variety*, Volume 411, No. 7 (June 30-July 13, 2008). Company has obtained a Copyright Registration No. TX 6-648-129 for this issue on August 8, 2008. A copy of the certificate of registration is annexed hereto as part of Exhibit A.
- (c) Variety, Volume 411, No. 9 (July 21-July 27, 2008). Company has not yet applied for registration of its copyright in this issue because it was published very recently, but intends to do so.
- (d) Interior Design, Volume 79, No. 7 (May 2008). Company has applied to the Copyright Office for registration of this issue and expects for the application to be approved by the Copyright Office in due course. A copy of the application for registration is annexed hereto as part of Exhibit B.
- (e) Interior Design, Volume 79, No. 8 (June 2008). Company has applied to the Copyright Office for registration of this issue and expects for the application

to be approved by the Copyright Office in due course. A copy of the application for registration is annexed hereto as part of Exhibit B.

- 8. Company is the owner of common law trademark rights in its magazine titles as well, based on its use of its marks in commerce over the period of many years, and the wide recognition of those marks by consumers as an indicator of the source of Company's products.
- 9. In addition, Company has rights to the trade dress of its magazines. Each magazine has a distinctive cover with a stylized logo that functions as a source indicator to consumers, and is non-functional. Mygazines.com displays the cover of issues of *Variety* and *Interior Design* magazine on the website, infringing Company's trade dress in those covers.
- 10. Company has not authorized or licensed defendants to post any content or trademarks from its magazines on the Mygazines.com website
- 11. Indeed, Company operates a website for each of its titles, and offers some of the content available in the print editions of its magazines through those sites. Company earns revenue from its websites by, among other things, offering advertising space to advertisers in conjunction with Company's content. By offering the same content to consumers on its site, for free, Mygazines.com directly competes with Company's websites.
- 12. Company also offers a digital edition of *Variety* magazine, produced by Olive Software, Inc., in much the same format as that offered by Mygazines.com. This digital edition is made available by Company solely to paying subscribers who visit its

website. For this reason, Mygazines.com also competes directly with Company's digital publication.

#### **Company Gave Defendants Notice of Their Infringing Activity**

- 13. On July 24, 2008, on behalf of Company, we wrote to defendant Salveo, the registered owner of Mygazines.com, at the address listed on its domain registration and its email address, demanding that it cease and desist from providing works of Company or its affiliates to the public, in any form. Company did not receive any response from Salveo.
- 14. On July 24, 2008, we wrote to defendant Cybernet at the address listed on its website, and to its email address, demanding that it immediately cease and desist from making any content or trademarks associated with Variety magazine available on Mygazines.com. Company did not receive any response from Cybernet.

#### Defendants' Conduct is Causing Company Irreparable Harm

- 15. This application is brought on by way of Order To Show Cause because expedited relief is necessary due to the irreparable harm Company is suffering and will suffer from defendants' continued infringement of Company's copyrights, trademarks and trade dress.
- 16. Defendants are engaging in wholesale theft and infringement of some of our Company's most valuable intellectual property. They are doing so blatantly, willfully and unrepentantly. Variety magazine, almost universally recognized as the bible of the entertainment industry, has developed global fame and goodwill over more than a century of

publishing under the "Variety" name. It is distributed in print in approximately 68 countries throughout the world and reaches thousands of additional readers through its website, Interior Design has, over more than 50 years of publishing, garnered worldwide recognition as a leading source of information for the interior design industry. It is distributed in print in approximately 81 countries throughout the world and reaches thousands of additional readers through its website, InteriorDesign.net. Intrinsic to the value and reputation of this magazine in the design community is Company's insistence on the highest quality of visual presentation, a value that is undermined by the substandard manner and context in which Defendants are displaying it. Our magazines are the product of the creative vision and hard work of scores of professionals, and require the investment of substantial sums of money. The success of our Company, and the livelihoods of numerous employees, depend on being able to reap the benefits of this hard work and investment. Defendants, with no creative or monetary investment at all in producing the magazines, have been unapologetically appropriating and distributing them for their own ends, in defiance of numerous demands to respect our intellectual property rights and cease making our magazines available on their website. Defendants' egregious conduct is causing irreparable damage to our goodwill, loss of market share and loss of subscription and advertising revenues.

6

WHEREFORE, for the foregoing reasons, together with those set forth in the accompanying summons and complaint, declaration of plaintiffs, and memorandum of law, your deponent respectfully prays for a temporary restraining order and preliminary injunction enjoining and restraining defendants from distributing or displaying Company's magazines, and from inducing and encouraging its users to upload our content.

Dated: August 18, 2008

Vice President & Associate General Counsel, Reed Business Information, a division of Reed Elsevier Inc. Associate General Counsel, Variety Inc.

Exhibit A
To
Declaration of Jeremy Pomeroy



This Certificate issued under the seal of the Copyright Office in accordance with title 17, United States Code, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.



REGISTRATION NUMBER

TX 6-202-571

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### Certificate of Registration



This Certificate issued under the seal of the Copyright Office in accordance with title 17, United States Code, identified below. The information on this certificate has

attests that registration has been made for the work been made a part of the Copyright Office records.

Register of Copyrights, United States of America

<b>O</b>	Form SE/Group UNITED STATES COPYRIGHY OFFICE

TX 6-648-129

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e representation of a material fact in the application for copyright registration provided for by section 409, or in any written statement filled in connection

Exhibit B
To
Declaration of Jeremy Pomeroy

Copyright Office fees are subject to change. For current fees, check the Copyright Office website at www.copyright.gov, write the Copyright Office, or call (202) 707-3000.

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REGISTR	ATION NUMBER

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Copyright Office fees are subject to change. For current fees, check the Copyright Office website at www.copyright.gov, write the Copyright Office, or call (202) 707-3000.

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